(1)

Vs 2005

SINGLE BENCH

IN THE HIGH COURT OF CHHATTISGARH, BILASPUR

MISC. CIVIL APPLICATION NO: 144 /2005

APPLICANT : M/s **SHYAMLAL AGARWAL,**
Engineers & Builders,
"Anand" Station Road, Raigarh (CG)
Through its Attorney Shri Anand Agrawal

-Vs-

NON APPLICANT : 1. **The Managing Director,**
Chhattisgarh State Ware Housing Corpn.,
97,Anand Nagar, Raipur (Chhattisgarh)

2. The Zonal Engineer,
Chhattisgarh State Ware Housing Corpn.,
Bilaspur (Chhattisgarh)

3. The Regional Manager,
Chhattisgarh State Ware Housing Corpn.,
Distt: Bilaspur (CG)

P.R. No. 1897/05
Presented by Shri M.P. Mishra & B. Dubey
dated 12-7-05

APPLICATION UNDER SECTION 11(6) OF THE ARBITRATION AND CONCILIATION ACT, 1996 FOR APPOINEMENT OF SOLE ARBITRATOR :

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : A.K. PATNAIK, CJ

M.C.C. NO.69 OF 2003

M/S. Integral Construction Company

Versus

State of Chhattisgarh and another

M.C.C. NO.70 OF 2003

M/S. Integral Construction Company

Versus

State of Chhattisgarh and another

M.C.C. NO.71 OF 2003

M/S. Integral Construction Company

Versus

State of Chhattisgarh and another

M.C.C. NO.144 OF 2005

M/S. Shyamlal Agrawal

Versus

The Managing Director, Chhattisgarh
State Ware Housing Corporation and others

M.C.C. NO.143 OF 2005

Ramavatar Agrawal Road Construction
Pvt. Ltd. Company

Versus

State of Chhattisgarh and others

M.C.C. NO.153 OF 2003

M/S. Sheo Constructions, Raipur

Versus

State of Chhattisgarh and others

Present: Mr. V.R. Rao, Mr. Anand Kumar Tiwari and Mr. Raghvendra Pradhan learned counsel for the applicants.

Mr. VVS Murthy, Dy. Advocate General, with Mr. Sumesh Bajaj, learned Dy. Govt. Adv. , for the State of Chhattisgarh

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O R D E R
(Passed on 16/09/2005)

These are six applications filed by the applicants under Section 11 of the Arbitration and Conciliation Act, 1996 making a request to the Chief Justice of the Chhattisgarh High Court or any person or institution designated by him to appoint an arbitrator to decide the disputes between the applicants and the respondents.

(2) The applicants have entered into the contracts with the different departments of the State Government for execution of works. The contract provides for reference of disputes between the parties to arbitration. The disputes and differences arising out of or connected with execution, discharge or satisfaction of any such works contract between the contractor and the State Government were being decided by the Arbitration Tribunal constituted under the Madhya Pradesh Madhyastham Ac'hikaran Adhiniyam, 1983. The State of Chhattisgarh was carved out of the State of Madhya Pradesh with effect from 01/11/2000 (the appointed day) under the Madhya Pradesh Reorganization Act, 2000. Section 74 (1) of the Madhya Pradesh Reorganization Act, 2000 provided inter alia that the Tribunal constituted under the State Act and having jurisdiction over the existing State of Madhya Pradesh shall on and from the appointed day continue to function and exercise jurisdiction as existed before the appointed day over the State of Chhattisgarh for a period of two years from the appointed day. As a consequence, the Arbitration Tribunal constituted under the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 continued to have jurisdiction up to 31/10/2002 to decide the disputes and differences between the contractor and the State Government arising out of the works contract, but ceased to have such jurisdiction with effect from 01/11/2002. The Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, however, was adopted and styled as Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 by the State Government of Chhattisgarh by a notification issued under Section 79 of the Madhya Pradesh Reorganization Act, 2000 and the Arbitration Tribunal was constituted by the State Government of Chhattisgarh under Section 3 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 with effect from 01/03/2005 and the Arbitration Tribunal so constituted by the State Government started functioning with effect from 02/09/2005.

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Before 02/09/2005, however, applicants filed these present applications stating therein that they are unable to file applications before the Arbitration Tribunal; as such Arbitration Tribunal had not been constituted and/or was not functioning in the State of Chhattisgarh.

(3) Mr. V.R. Rao learned counsel appearing for the applicants in M.C.C. Nos.69 of 2003, 70 of 2003 & 71 of 2003, Mr. Anand Kumar Tiwari learned counsel appearing for the applicants in M.C.A. No.144 of 2005 & M.C.C. No.143 of 2005 and Mr. Raghvendra Pradhan learned counsel appearing for the applicant in M.C.C. No.153 of 2003 submitted that admittedly the Arbitration Tribunal constituted under the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 started functioning only on 02/09/2005 but before 02/09/2005 the applicants had filed the present applications under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator as the Arbitration Tribunal was not functioning in the State of Chhattisgarh. They submitted that the arbitration proceedings had thus commenced before 02/09/2005 and Sub-section (2) of Section 20 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 provides that nothing in sub-section (1) shall apply to any arbitration proceedings pending before any authority under the provisions of the Arbitration Act, or any other law relating to arbitration, and such proceedings may be continued, heard and decided in accordance with agreement or usage or provisions of the Arbitration Act or any other law relating to arbitration in all the stages, as if this Act had not come into force. They also referred to the provisions of Sub-section (4) of Section 2 of the Arbitration and Conciliation Act, 1996 in support of their submission that the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 would be deemed to be an arbitration agreement and the provisions of the Arbitration and Conciliation Act, 1996 including Section 11 thereof except in so far as the provisions therein are inconsistent with the provisions of the said Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983.

(4) Mr. VVS Murthy, Dy. Advocate General, on the other hand, submitted that now the Arbitration Tribunal has been constituted under the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 and had started functioning with effect from 02/09/2005, the applicants should move the said Tribunal for settlement of their disputes with the State Government.

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(5) Section 20 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 as well as Sub-section (4) of Section 2 of the Arbitration and Conciliation Act, 1996 are quoted herein below:

> "**20. Bar of jurisdiction of civil court.-** (1) As from the date of the constitution of the Tribunal and notwithstanding anything contained in Arbitration Act, 1940 (No. 10 of 1940) or any other law, for the time being in force, or in any agreement or usage to the contrary, no civil court shall have jurisdiction to entertain or decide any dispute of which cognizance can be taken by the Tribunal under this Act.
>
> (1-A) Notwithstanding anything contained in sub-section (1), a Civil Court may entertain and decide any dispute of the nature specified in the said sub-section referred to it by a person in the capacity of indigent person.
>
> (2) Nothing in sub-section (1) shall apply to any arbitration proceeding either pending before any arbitrator or umpire or before any court or authority under the provisions of Arbitration Act, or any other law relating to arbitration, and such proceedings may be continued, heard and decided in accordance with agreement or usage or provisions of Arbitration Act or any other law relating to arbitration in all their stages, as if this Act had not come into force".

Sub-section (4) of Section 2 of the Arbitration and Conciliation Act, 1996 reads as under:

> "**2 (4)** This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder".

It will be clear from the provisions of Sub-section (1) of Section 20 that as from the date of the constitution of the Tribunal no civil court has

jurisdiction to entertain or decide any dispute of which cognizance can be taken by the Tribunal under the Act. It will be further clear from Sub-section (2) of Section 20 that the provisions of Sub-section (1) of Section 20 will not apply to any arbitration proceeding pending before any arbitrator or umpire or before any court or authority under the provisions of the Arbitration Act or any other law relating to arbitration. The Arbitration Tribunal constituted under the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 and started functioning with effect from 02/09/2005 but by the said date each of the applicants before this Court had made a request to the Chief Justice to appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. Assuming that the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 was the arbitration agreement between the parties as provided in Sub-section (4) of Section 2 of the Arbitration and Conciliation Act, 1996, the provisions of Part-I of the said Act of 1996 including Section 11 (6) apply also to arbitration under the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 and the proceedings pending before the Chief Justice stood saved under Sub-section (2) of Section 20 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 I am, therefore, of the prima facie view that the constitution and functioning of the Arbitration Tribunal under the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 with effect from 02-09-2005 would not be a bar for the Chief Justice to pass an order appointing an arbitrator in these proceedings.

(6) Accordingly, I appoint Shri Justice B.C. Verma as arbitrator in M.C.C. No.69 of 2003, M.C.C. No.70 of 2003 & M.C.C. No.71 of 2003, Shri Justice K.L. Shrivastava as arbitrator in M.C.C. No.153 of 2003 and Shri Justice S.K. Tiwari in M.C.C. No.143 of 2005 & M.C.C. No.144 of 2005, subject to their consent.

Sd/-
Chief Justice

Brajesh*